

09-3841  
LOCALLY ASSESSED PROPERTY  
SIGNED 10-21-2010

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,  Petitioner,  v.  BOARD OF EQUALIZATION OF WASHINGTON COUNTY, UTAH,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 09-3841  Parcel No. #####-1 #####-2 #####-3 Tax Type: Property Tax/Locally Assessed Tax Year: 2009  Judge: Cragun
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**This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37, the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.**

**Presiding:**

Marc B. Johnson, Commissioner  
Michael J. Cragun, Commissioner

**Appearances:**

For Petitioner: PETITIONER REP. 1, Taxpayer's Representative  
PETITIONER REP. 2, Taxpayer's Representative  
For Respondent: RESPONDENT REP. 1, Washington County Assessor  
RESPONDENT REP. 2, Washington County Assessor's Office

**STATEMENT OF THE CASE**

Petitioner brings this appeal from the decision of the County Board of Equalization. The parties presented their arguments in an Initial Hearing pursuant to the provisions of Utah Code Ann. Sec. 59-1-502.5, on June 8, 2010<sup>1</sup>. Petitioner (the "Property Owner") appeals the assessed value established for the subject properties by the Washington County Board of Equalization as

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<sup>1</sup> While the parties presented their arguments for appeals 09-3841 and 09-3842 in a combined hearing the Commission issues separate orders for each claim.

of the January 1, 2009 lien date. The valuations originally set by County Assessor, which the County Board of Equalization sustained, the Property Owner's requested value reductions and the Respondent's (the "County") requested value reductions are summarized in the following table:

Parcel Number	Original Valuation (Sustained by BOE)	Property Owner's Valuation Request	County's Valuation Request
#####-1	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-2	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-3	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

#### APPLICABLE LAW

All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law. Utah Code Ann. Sec. 59-2-103(1).

"Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts . . . . Utah Code Ann. Sec. 59-2-102(12).

Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board. Utah Code Ann. Sec. 59-2-1006(1)

In reviewing the county board's decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if: (a) the issue of equalization of property values is raised; and (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties. Utah Code Ann. Sec. 59-2-1006(4)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997). See also Utah Code Sec. 59-1-1417 which provides, "In a proceeding before the commission, the burden of proof is on the petitioner . . ."

#### DISCUSSION

The subject properties are ( WORDS REMOVED ) located in CITY, Utah. At the hearing, the Property Owner's representatives presented an equalization argument. As a

preliminary matter, they presented a report prepared by COMPANY A, a real estate appraisal and consulting firm (“appraisers”). The report, signed by both a Utah Certified General Appraiser and a Utah Licensed Appraiser, compared the quality rating applied by the County Assessor to the appraisers’ opinion of a quality rating based on the Marshall and Swift Cost Services manual. The comparison was applied to the subject properties and to the comparable properties that each party presented to the County Board of Equalization. The Property Owner’s representatives also testified that the appraisers who prepared the report calculated a Depreciated Replacement Cost New (“DRCN”) for all of the properties evaluated in the report.

The Property Owner’s representatives presented a comparison of the County Assessor’s valuation of the improvements to the subject properties with their appraisers’ value calculations of those improvements. Using the ratio of the assessed value per square foot against the Marshall & Swift cost per square foot, the representatives calculated “a relative value.” The following table illustrates the comparison for the subject properties:

Property ID	Assessor Quality Rating	Marshall & Swift Quality Rating	Assessed Value per SF	Marshall & Swift Cost per SF	Relative Value
#####-1	Fair+	Low Cost/Average	\$\$\$\$\$	\$\$\$\$\$	90.90%
#####-2	Fair+	Low Cost/Average	\$\$\$\$\$	\$\$\$\$\$	102.73%
#####-3	Fair+	Low Cost/Average	\$\$\$\$\$	\$\$\$\$\$	112.10%

The Property Owner’s representatives also presented the same analysis of the comparable properties presented by the County Assessor at the County Board of Equalization hearing. This table contains the analysis:

Property ID	Assessor Quality Rating	Marshall & Swift Quality Rating	Assessed Value per SF	Marshall & Swift Cost per SF	Relative Value
#####-4	Average	Average	\$\$\$\$\$	\$\$\$\$\$	99.75%
#####-5	Low	Low Cost/Average	\$\$\$\$\$	\$\$\$\$\$	70.07%

Finally, the following table presents a like breakdown of the comparable properties the Property Owner’s representatives submitted for the County Board of Equalization’s review:

Property ID	Assessor Quality Rating	Marshall & Swift Quality Rating	Assessed Value per SF	Marshall & Swift Cost per SF	Relative Value
#####-6	Average	Low Cost/Average	\$\$\$\$\$	\$\$\$\$\$	45.72%
#####-7	Average	Low Cost/Average	\$\$\$\$\$	\$\$\$\$\$	57.56%
#####-8	Average	Low Cost/Average	\$\$\$\$\$	\$\$\$\$\$	80.90%
#####-9	Fair	Low Cost/Average	\$\$\$\$\$	\$\$\$\$\$	85.07%
#####-10	Low & Fair	Low Cost/Average	\$\$\$\$\$	\$\$\$\$\$	81.30%

The Property Owner's representatives testified that the average "Relative Value" of both parties' comparables is 74.34%. They argue that because the "Relative Values" of the subject properties differs by more than 5% from the "Relative Values" of the comparable properties, the 74.34% factor should be applied to the "Marshall and Swift Cost per SF" determined by their appraisers with the resulting product multiplied by the square footage of the corresponding improvements to yield the equalized value of the improvements to each of the subject properties.<sup>2</sup> Adding the uncontested land valuation establishes the values requested by the Property Owners.

The County Assessor questioned the applicability of the arguments made by the Property Owner's representatives to equalizations of fair market value. He argued that a particular property's valuation is assessed based upon a multitude of factors related to that property. He further argued that focusing on one factor—in this case construction quality—cannot yield an accurate fair market value comparison between several properties.

The County's representatives then presented a valuation estimate of the subject properties based upon a purported downward adjustment in the quality of the improvements from "fair+" to "fair." This analysis forms the basis of the County's requested values.

#### ANALYSIS

A cost approach incorporates several components into determining a cost estimate. The representatives only based the analysis on a comparison of quality of construction. To the extent, if any, that other factors were used by the appraisal firm in establish the Marshall and Swift cost estimates, no supporting documentation was provided.

More critical is the representatives' methodology. The appropriate method of measuring equalization is a direct comparison of assessments between properties. The Owner's approach was to compare the subject properties and comparable properties to a separate, third-party cost estimate. Utah Code Ann. § 59-2-1006(4) specifically requires that an equalization adjustment may be considered when "the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties." (Emphasis added.)

In making this comparison, a party is required to identify all of the relevant characteristics of the properties. While we do not disagree that a single component of an assessment, e.g. improvement, land, or site improvements might be compared independently, the major characteristics of each component must be identified. For example, whether two buildings of the same quality of construction have different values is not relevant if the buildings are of different age, style, configuration, and class of construction, and if the buildings have different

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<sup>2</sup> The representatives also provided in writing that an unidentified certified fee appraiser had examined the subject properties and both parties' comparable assessments, and had established an equalized value of \$\$\$\$ per sq. ft. No supporting documentation was provided, not did the Owner's representative proffer this value at the hearing.

features. For the properties under appeal, it is apparent that the assessments on a unit basis vary by more than 5%. However, the variance may be due to more than quality of construction. Without knowing the differences in all of the major characteristics and features, the Commission cannot determine what adjustments, other than those recommended by the assessor would be appropriate.

Finally, we are concerned that the Owner wants to adjust five properties (including the two under appeal 09-3842) based on seven comparables. The total number of similar properties in the same geographic location is unknown. For that reason alone, the Commission would be reluctant to make an equalization adjustment.

Because their arguments did not make an appropriate comparison, the Property Owner's representatives have not met their statutory burden of showing that the subject properties' assessment deviates in value plus or minus 5% from the assessed value of comparable properties.

Also, the Property Owner's representatives did not refute the County's proposed adjustments. The County's evidence appears to support the requested valuation adjustments. Therefore, the subject properties merit appraised value adjustments to \$\$\$\$\$ for parcel #####-1, \$\$\$\$\$ for parcel #####-2 and \$\$\$\$\$ for parcel #####-3.

#### DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject properties as of January 1, 2009, is \$\$\$\$\$ for parcel #####-1, \$\$\$\$\$ for parcel #####-2 and \$\$\$\$\$ for parcel #####-3. The County Auditor shall adjust its records in accordance with this decision. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission  
Appeals Division  
210 North 1950 West  
Salt Lake City, Utah 84134

Appeal No. 09-3841

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

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